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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1983

OHIO-SEALY MATTRESS MANUFACTURING COMPANY, et al.,

Petitioners,

v.

SEALY, INCORPORATED,

Respondent.

REPLY BRIEF OF PETITIONERS

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REASONS FOR GRANTING THE WRIT

In 1980, one year after this antitrust suit was filed, a related contractual dispute arose and petitioners immediately demanded arbitration pursuant to the arbitration clause of the contract. Respondent refused to arbitrate voluntarily and petitioners immediately filed a motion to compel arbitration pursuant to Section 4 of the Federal Arbitration Act, 9 U.S.C. § 4, which states that...

> ... upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court *shall make an order di-*

> *recting the parties to proceed to arbitration in accordance with the terms of the agreement.*
> (Emphasis supplied.)

This statutory provision was intended by Congress "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, U.S. , 103 S.Ct. 927, 940 (1983).

Notwithstanding this clear Congressional command, the District Court first did nothing for two years. Then the District Court denied arbitration based upon the Seventh Circuit's "permeation doctrine," which purports to grant District Courts discretion to delay arbitration. *Applied Digital Technology, Inc.* v. *Continental Casualty Co.*, 576 F.2d 116 (7th Cir. 1978).

Petitioners appealed but their appeal was dismissed for want of jurisdiction, thus effectively denying petitioners' substantive federal right to "quick and easy" arbitration. Such an important right should not be subverted by procedural anachronisms such as the *Enelow-Ettelson* doctrine. See *Restraining Effects of the Final Judgment Rule on the Arbitration Process*, 66 Yale Law Journal 293 (1956).

Petitioners have sought arbitration for three and one-half years. They should wait no longer. The writ should be granted.

Respectfully submitted,

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